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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,741	01/30/2004	Ryan C. Lakin	5490-000250/CPB	6558
27572 7590 05/18/2007 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			EXAMINER STOKES, CANDICE CAPRI	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 05/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/769,741	<b>Applicant(s)</b> LAKIN ET AL.	
	<b>Examiner</b> Candice C. Stokes	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-32 and 34-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4--32, and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gray, III (USPN 5,800,555) in view of Sullivan et al (US 2003/0125810). As to claim 22, Gray discloses a kit of prosthetic components 10 comprising: an acetabular prosthetic 12 defining an integral spherical bearing surface 38 and a locking mechanism 16 configured to accept a second prosthetic device 14; at least one second prosthetic device 14 having a partially spherical bearing surface 72, the partially spherical bearing surface 72 is configured substantially surround a head 78 of a femoral component 80; and a femoral prosthetic 80. Regarding claim 23, said second prosthetic device 14 is selected from a group consisting of a constraining ring, a bearing insert, a bearing having an integral constraining ring, and combinations thereof. As to claim 25, said second prosthetic device 14 is a constraining ring defining a constraining ring bearing surface 72 and a constraining ring locking mechanism 16 configured to fixably couple said constraining ring to said acetabular prosthetic 12. With regards to claims 26 and 29-31, the second prosthetic device 14 is a polymer bearing insert (see column 4, lines 15-16) which defines an interior bearing surface 72 and a bearing insert locking mechanism 16, wherein said bearing insert locking mechanism 16 is configured to lock said polymer bearing insert to said acetabular prosthetic 12. As to claim 27, Gray also discloses a method for implanting a medical device

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comprising: implanting a first prosthetic 12 having an integral internal bearing surface 38 and a locking mechanism 16 which is configured to fixably accept a second prosthetic 14 having a second bearing surface 72 which substantially surrounds a head portion 78 of a femoral component 80, to a prepared joint; and inserting a femoral prosthetic 80 within the integral internal bearing surface 38 of the first prosthetic 12. As to claim 28, the method further comprising coupling a device second prosthetic device 14 to the locking mechanism 16 after the first prosthetic device 12 has been implanted in the prepared joint. Regarding claim 32, the method further comprising: removing the femoral prosthesis 80 from said first prosthetic 12, coupling said second prosthetic 14 to said first prosthetic 12, and inserting the femoral prosthesis 80 into said first and second prosthetics 12,14. As to claims 34-36, Gray also discloses, an acetabular prosthetic implant comprising: a first member having a bone engagement surface and an integral generally spherical first bearing surface, said first member defining a locking mechanism configured to be coupled to a second prosthetic member; and a second prosthetic member, coupled to said locking mechanism, said second member defining a second semi-spherical bearing surface (see column 3, line 35), said first and second bearing surfaces defining a generally capsule shaped cavity, and wherein said generally capsule shaped cavity is configured to rotatably accept a head of a femoral prosthetic and allow the translation of the head along a predetermined axis. Gray, III et al substantially discloses the claimed invention as amended except, they do not claim the concave bearing surface being polished. Sullivan et al teach "the bearing surface of the prosthesis which should have minimum friction and maximum resistance to wear can be formed of a very hard material such as a high density ceramic or a CoCrMo alloy or other hard bio compatible material, polished to a smooth bearing surface. It

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would have been obvious to one having ordinary skill in the art to incorporate a polished bearing surface such as that taught by Sullivan et al into the prosthetic disclosed by Gray, III et al in order to minimize the friction and maximize the wear resistance of the bearing surface. Further to the amended version of claims 1,22,27, and 34 the term “configured to directly engaged...” is also met by this rejection because the bearing surface as disclosed is capable of directly engaging an articulating surface.

Regarding claim 24 Gray discloses the claimed invention except for the kit comprising a plurality of femoral prosthetic components. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include more than one femoral component within the kit, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

As to claim 37, Gray discloses the claimed invention except for the generally cylindrical bearing surface having a length of about 1 to about 4mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the bearing surface any desired length suitable for its intended use, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 18, Gray discloses the claimed invention except for the reinforcement structure having a C-shaped cross-section. It would have been obvious to make the reinforcement structure having a c-shaped cross-section, since such a modification would have involved a mere change in the shape of an element.

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***Allowable Subject Matter***

Claim 33 is allowed.

***Response to Arguments***

In response to the request for pre-appeal conference filed 01/02/07, the rejection has been modified to clarify the position of the Office. The arguments submitted with respect to the Cook et al reference were persuasive and those rejections have been withdrawn.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached on 8:00am - 4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Candice C. Stokes



CRIS RODRIGUEZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700